

SUTHERLAND, ASBILL & BRENNAN

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Senate Finance Committee Chairman's Proposal
Re Excise Taxes and Tariffs

Constitutional Issues

- The Senate Finance Committee Chairman proposes to make Federal excise taxes and tariffs nondeductible for income tax purposes. Presumably, this would also eliminate the present treatment of Federal excise taxes and tariffs as part of a manufacturer's "cost of goods sold."
- Numerous long-standing decisions of the Supreme Court have established that Congress is constitutionally authorized to impose an income tax only on the gross income of a manufacturing company, not on its gross receipts.
- Gross income means gross receipts minus the costs of capital and labor incurred in the production of such receipts. Costs of capital and labor incurred in the manufacturing process constitute a manufacturer's "cost of goods sold."
- An indisputable component of cost of goods sold is the cost of raw materials. Tariffs imposed on imported raw materials clearly are part of the cost of such materials.
- Manufacturer's excise taxes are imposed by reason of the manufacturing process itself and the courts have considered them to be a cost of production. Simply stated, a manufacturer could not produce its product without paying such taxes. Thus, a manufacturer's excise tax is as much a part of the cost of goods sold as the cost of raw material itself.
- Disallowance of the treatment of manufacturer's excise taxes and tariffs as part of the cost of goods sold has the effect of unconstitutionally imposing an income tax on a portion of a manufacturer's gross receipts.

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